## NOTES OF CASES.

**Dissolution of Illegal Combination under Sherman Anti-Trust Law.** —In Continental Ins. Co. *v.* Reading Co., 42 Sup. Ct. Rep. 540, the Supreme Court of the United States held that the fact that a corporation, formed to secure illegal control of a railroad and of coal mines along the lines, had issued a mortgage covering the assets of both railroad and mines to secure its bonds, does not entitle the bondholders to prevent the complete dissolution of the illegal combination, even though thereby the security of the bonds, which depended to some extent on the union of the mines and railroad under control, would be lessened.

Mr. Chief Justice Taft in delivering the opinion of the court said in part:

"The power of the court under the Sherman Anti-Trust Law to disregard the letter and legal effect of the bonds and general mortgage under the circumstances of this case, in order to achieve the purpose of the law, we cannot question. The principles laid down and followed in the case of United States *v.* Southern Pacific Company *et al.*, 258 U. S. —, 42 Sup. Ct. —, 66 L. Ed. —, decided today, leave no doubt upon this point. Indeed, the case which we there cite, Philadelphia, Baltimore & Washington Railroad Co. *v.* Schubert, 224 U. S. 603, 613, 614, 32 Sup. Ct. 589, 56 L. Ed. 911, is a stronger instance of the power of Congress in regulating interstate commerce to disregard contracts than is needed in this case, because there it was enforced as to a contract made before the regulation. It may be conceded, as averred, that the bondholders in this case were innocent of any actual sense of wrongdoing, that they relied on the advice of eminent counsel in assuming that the union of the Railroad and the Coal Companies under the control of the holding company was not a violation of the Sherman Law, and that some of them surrendered bonds secured by underlying liens of unquestioned validity created before the enactment of the Sherman Law. Nevertheless, spread all over the face of the general mortgage, was the information and notice of the union of the railway and coal properties for the very purpose which is the head and front of the offending under the Anti-Trust Law, and which requires this court to dissolve the illegal combination. The general mortgage was the indispensable instrument of the unlawful conspiracy to restrain interstate commerce. It was the advantage of the legally improper relation between the railway and coal interests which made the security so attractive. In one of the phases of a case, reported as United States *v.* Lake Shore & M. S. Ry. Co. (D. C.), 203 Fed. 295, the Court of Appeals of the Sixth Circuit was obliged to consider on an intervening petition, the question of the power of the court under the Sherman Act to deal with a mortgage whose lien if held to be inviolable interfered with the effective dissolution of the offending

combination of a railway company and a coal company. The opinion is not reported (280 Fed. —, 42 Sup. Ct. 35), but we have been furnished a certified copy of the memorandum opinion and its language is so pertinent that we quote it as expressing our view:

" 'One who takes a mortgage upon several items of property of such character that their common ownership or operation may offend against the Anti-Trust Law or the commodities clause, and such that the mortgage serves practically to aid in tying them together, must be deemed to hold his mortgage subject to the contingency that if the complete and final separation of one item of the mortgage property from the remainder becomes essential to the due enforcement of either named law, the court charged with such enforcement may take control of that item, free if from the consolidating tendency of the mortgage, and substitute therefor its judicially ascertained equivalent. Otherwise the mortgage will stand as the ready means of restoring—or at least tending to restore—those conditions which the court is endeavoring to destroy. It may well be true that a railroad and a coal company under common ownership and management are worth more as security under a mortgage than when independent and that their effective separation does impair the mortgage security, but this cannot make the law helpless.' "

"We have no desire to vary the security of the bondholders more than seems necessary to effect fully the purpose of the law, and wish to recognize their equities as against the two companies and the stockholders, as will later appear."

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**Impropriety of Argument Based on Failure to Cross-Examine Witnesses in Rebuttal of Defendant's Good Character.**—In State *v.* Van Hoozer, 185 N. W. 588, the Supreme Court of Iowa held that in a prosecution for larceny of an automobile, where defendant introduced character witnesses, and the state cross-examined regarding other acts and crimes of defendant, argument that defendant's counsel had failed to cross-examine witnesses in rebuttal of defendant's good character was improper.

The court said in part:

"We cannot set our seal of approval upon such methods to secure the conviction of one charged with crime. Ability, skill, alertness, and zeal in a public prosecutor are commendable, and should be encouraged. It is for the good of society, for the welfare of the state, that crime shall be punished, and that the prosecution of criminals shall be vigilant and vigorous. But, under our laws, the person charged with crime has certain well-known rights which the state is bound to respect. Time and again we have declared that proof of other crimes than the one with which a defendant is charged is not admissible against him. The state cannot do, by the indirect method